

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 8:03-CR-77-T-30-TBM
)	The Honorable James S. Moody, Jr.
SAMI AMIN AL-ARIAN, <i>et al.</i>)	
)	
Defendants.)	

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED SET OF JURY INSTRUCTIONS**

COMES now the Accused Dr. Sami Al-Arian, by undersigned counsel and requests that the following jury instructions be given during the Court's charge at the end of the trial in the case herein.

Dated: 26 September 2005

Respectfully submitted,

/s/Linda Moreno_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th September 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and to Stephen N. Bernstein, Counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
Linda Moreno
Attorney for Sami Al-Arian

I

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.

It is not to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their words transcend the bounds of the freedom of speech which the Constitution protects.

AUTHORITIES:

NAACP v. Claiborne, 458 U.S. 886, 908-909, 102 S.Ct. 3409, 3423, *De Jonge v. Oregon*, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

Speech does not lose its protected character simply because it may embarrass others or coerce them into action.

The right to free speech extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts.

AUTHORITIES:

NAACP v. Claiborne, 458 U.S. 886, 910, 102 S.Ct. 3409, 3424 *Thomas v. Collins*, 323 U.S. 516, 537, 65 S.Ct. 315, 325, 89 L.Ed. 430.

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

Through exercise of their First Amendment rights, the Accused sought to bring about political, social, and economic change. Through speech, assembly, and petition – rather than through riot or revolution – the defendants sought to change a social order that had consistently treated them and their countrymen as second-class citizens.

AUTHORITIES:

NAACP v. Claiborne, 458 U.S. 886, 911-912, 102 S.Ct. 3409, 3425

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN’S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

Speech concerning public affairs is more than self-expression; it is the essence of self-government.

There is a “profound national commitment” to the principle that “debate on public issues should be uninhibited, robust and wide-open.”

AUTHORITIES:

Garrison v. Louisiana, 379 U.S. 64, 74-75, *New York Times Co. v. Sullivan*, 376 U.S. 254, 270

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

The government may not impose criminal sanctions or deny rights and privileges merely because of an individual association with an unpopular organization.

AUTHORITIES:

Healy v. James, 408 U.S. 169, 185-186, 92 S.Ct. 2338, 2348, 33 L.Ed.2d 266

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

The mere *advocacy* of the use of force or violence does not remove speech from the protection of the First Amendment. ...the principle that the constitutional guarantees of free speech and free press do not permit the government to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

AUTHORITIES:

Healy v. James, 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment)

The mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action.

AUTHORITIES:

Healy v. James, 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment: Strictissimi Juris)

You are instructed that a person who is in sympathy with the legitimate aim of an organization, but not specifically intending to accomplish that aim by a resort to violence, is not punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share.

AUTHORITIES:

Nota vs. United States, 367 U.S. 290, at 299-300 (1961); *Scales vs. United States*, 367 U.S. 203 (1961); *United States v. Spock*, 416 F. 2d, 165 (1st Cir. 1969)

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(First Amendment: Personal Guilt)

You are instructed that the government must prove beyond a reasonable doubt the defendant's own advocacy of and participation in the illegal goals of the conspiracy and you may not impute the illegal intent of alleged co-conspirators to the actions of the defendant.

AUTHORITIES:

United States v. Montour, 944 F. 2d 1019, 1024 (2d Cir. 1991); *United States v. Spock*, 416 F. 2d, 165 at 173 (1st Cir. 1969); *Scales vs. United States*, 367 U.S. 203, 224 (1961); *Nota vs. United States*, 367 U.S. 290, at 299-300 (1961);

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(IEEPA)

In order to convict a defendant for material support of a Specially Designated Terrorist, you are instructed that the government must prove the following essential elements beyond a reasonable doubt:

One: The Defendant knew that either an organization was an SDT (Specially Designation Terrorist) or committed unlawful activities that caused it to be designated as a SDT; and

Two: The Defendant had the specific intent that the contribution be used to further the future unlawful activities of the SDT.

You are instructed that the government must demonstrate a bad purpose to support a conviction under this law. This cannot be demonstrated by proof of knowledge of past unlawful activity alone. The government must show some additional intent to further future unlawful activity to support criminal liability.

AUTHORITIES:

United States v. Al-Arian, Case No. 8:03-CR-77-T 30TBM, slip op. at 27, 28 (M.D. Fla. March 12, 2004) (Docket No. 479)

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(2339B(a)(1))

In order to convict a defendant for material support to a foreign terrorist organization, you are instructed that the government must prove the following three essential elements beyond a reasonable doubt:

One: the organization was a Foreign Terrorist Organization (FTO) or had committed unlawful activities that caused it to be so designated;

Two: the defendant knew what he was furnishing was “material support”; and

Three: the defendant had the specific intent to further the illegal activities of a FTO.

AUTHORITIES:

United States v. Al-Arian, Case No. 8:03-CR-77-T 30TBM, slip op. at 25 (M.D. Fla. March 12, 2004) (Docket No. 479)

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN’S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Acted knowingly)

You have been instructed that in order to sustain its burden of proof, the government must prove that the defendant acted knowingly. A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the defendant acted knowingly may be proven by the defendant’s conduct and by all of the facts and circumstances surrounding the case.

AUTHORITIES:

1 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 3A-1 “Knowingly.”

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Acted willfully)

You have been instructed that in order to sustain its burden of proof the government must prove that the defendant acted willfully. “Willfully” means to act with knowledge that one’s conduct is unlawful and with the intent to do something the law forbids, that is to say with the bad purpose to disobey or to disregard the law.

The defendant’s conduct was not “willful” if it was due to negligence, inadvertence, or mistake or was the result of a good faith misunderstanding of the requirement of the law. In this connection, it is for you to decide whether the defendant acted in good faith, that is, whether he sincerely misunderstood the requirements of the law, or whether he knew what he was required to do and deliberately did not do so.

AUTHORITIES:

1 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 3A-3 “Willfully.”

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Acted intentionally)

The government must prove beyond a reasonable doubt that the defendant acted with specific intent. Before you can find that defendant acted intentionally, you must be satisfied beyond a reasonable doubt that the defendant acted deliberately and purposefully. That is, defendant's acts must have been the product of defendant's conscious objective rather than the product of a mistake or accident.

AUTHORITIES:

1 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 3A-4 "Intentionally."

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Falsity)

The government must prove beyond a reasonable doubt that the defendant testified falsely. In order to satisfy this element, the government must prove that a part of the testimony given by the defendant, as set forth in the indictment, was false. An answer to a question is false when it is contrary to the facts; that is, when it is not true. The truth or falsity of an answer must be determined by the facts existing at the time the answer was made.

In reviewing the testimony which is alleged to have been false, you should consider such testimony in the context of the sequence of questions asked and answers given. The words used should be given their common and ordinary meaning unless the context clearly shows that a different meaning was understood by both the questioner and the witness.

However, and this is important, you may not find the defendant guilty unless you all agree, unanimously, that one particular answer is false. It is not enough that you all believe that *some* answer given by the defendant is false. That is, you cannot find the defendant guilty if some of you think that only answer A is false and the rest of you that only answer B is false. There must be at least one specific answer that all of you believe is false in order to convict the defendant.

AUTHORITIES:

2 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 48-5 “Second Element-Falsity.”

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN’S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Falsity)

If you should find that a particular question was ambiguous—that is, subject to more than one interpretation—and that the defendant truthfully answered one reasonable interpretation of the question under the circumstances presented, then such answer would not be false. Similarly, if you should find that the question was clear but the answer was ambiguous, and one reasonable interpretation of such answer would be truthful, then such answer would not be false.

AUTHORITIES:

2 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 48-6 “Ambiguous Questions and Answers.”

ACCEPTED	_____
REJECTED	_____
MODIFIED	_____
WITHDRAWN	_____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Falsity)

In deciding whether the defendant's answers are false, the answers must be given their natural meaning in the context in which the words were used. If you find that an answer given by the defendant was literally true, then this element is not satisfied and you must find the defendant not guilty on this charge. As long as a statement, or a reasonable interpretation of a statement, is narrowly or literally true, there can be no conviction for perjury, even if you find that the answer was unresponsive to the question asked or intentionally misleading.

AUTHORITIES:

2 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), Instruction 48-8 "Unresponsiveness or Literal Truth Is Not Falsity."

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

(Elements of the Conspiracy)

In order to satisfy its burden of proof, the government must establish each of the following four essential elements beyond a reasonable doubt:

First, that two or more persons entered the unlawful agreement charged in the indictment starting in 1984;

Second, that the defendant knowingly and willfully became a member of the conspiracy;

Third, that one of the members of the conspiracy knowingly committed at least two of the overt acts charged in the indictment; and

Fourth, that the overt acts which you find to have been committed were committed to further some objective of the conspiracy.

AUTHORITIES:

2 L. Sand, *et al.*, Modern Federal Jury Instructions (2004), 19-3

United States Supreme Court: *Ingram v. United States*, 360 U.S. 672, 79 S. Ct. 1314, 3 L. Ed. 2d 1503 (1959) .

Eleventh Circuit: *United States v. Solomon*, 686 F.2d 863 (11th Cir. 1982) ; *United States v. Hartley*, 678 F.2d 961 (11th Cir. 1982), *cert. denied*, 459 U.S 1170 (1983) .

48-8 “Unresponsiveness or Literal Truth Is Not Falsity.”

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

**DEFENDANT SAMI AMIN AL-ARIAN'S SECOND
PROPOSED JURY INSTRUCTION NO. _____**

Member of the Conspiracy

The government must prove beyond a reasonable doubt that the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement--that is to say, a conspirator.

AUTHORITIES:

United States Supreme Court: *Blumenthal v. United States*, 332 U.S. 539, 68 S. Ct. 248, 92 L. Ed. 154 (1947) .

ACCEPTED _____

REJECTED _____

MODIFIED _____

WITHDRAWN _____

